

REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 8-12, 14, 16, 18, 20, 37 and 38 are pending in this application. Claims 8, 16, 18 and 20 are amended; and Claims 1-7, 13, 15, 17 and 19 are canceled without prejudice or disclaimer by the present amendment. Support for the amended claims can be found in the original specification, claims and drawings.<sup>1</sup> No new matter is presented.

In the Office Action, Claims 1-5, 7, 15, 17, and 19 were rejected under 35 U.S.C. §103(a) as unpatentable over Yamagishi et al. (U.S. Pat. 7,136,096, herein Yamagishi) in view of Bender et al. (U.S. Pat. 6,611,629, herein Bender); Claim 6 was rejected under 35 U.S.C. §103(a) as unpatentable over Yamagishi in view of Bender and Miyatake et al. (U.S. Pat. 6,466,262, herein Miyatake); Claims 8-14, 16, 18 and 20 were rejected under 35 U.S.C. §103(a) as unpatentable over Yamagishi in view of Bender and Fukushima et al. (U.S. Pat. 5,903,303, herein Fukushima); and Claims 37 and 38 are allowed.

Applicant appreciatively acknowledges the indication of allowable subject matter.

The undersigned also appreciate the courtesy extended by Examiner Daniels and Primary Examiner Le in holding a personal interview with the undersigned on January 24, 2008. During the interview, an overview of the invention was presented and the pending claims were discussed in view of the applied references. No agreement was reached during the interview pending the submission of a formal response to the outstanding Office Action.

Claims 1-5, 7, 15, 17, and 19 are canceled by the present amendment, thereby rendering the outstanding rejection of these claims under 35 U.S.C. §103 moot.

Claims 8-14, 16, 18 and 20 were rejected under 35 U.S.C. §103(a) as unpatentable over Yamagishi in view of Bender and Fukushima. In response to this rejection, Applicant

---

<sup>1</sup> E.g., original Claim 13.

respectfully submits that amended independent Claims 8, 16, 18 and 20 recite novel features clearly not taught or rendered obvious by the applied references.

Independent Claim 8, for example, is amended to incorporate the subject matter of Claim 13 and recites, in part, a digital camera comprising “a photographing unit which picks-up an image and obtains image data... wherein said photographing unit can ***simultaneously obtain a plurality of images of the same object at different exposure values.***”

Independent Claims 16, 18 and 20, while directed to alternative embodiments, are amended to recite similar features. Accordingly, the remarks and arguments presented below are applicable to each of independent Claims 8, 16, 18 and 20.

In rejecting this claimed feature, the Office Action relies on col. 4, ll. 41-50 of Fukushima, asserting that “since different drive portions are controlling the exposure control members, it is inherent that the exposure values can differ from each other.”<sup>2</sup> Applicant respectfully traverses this assertion.

Fukushima is directed to a multi-eye image pickup apparatus that performs “proper” exposure for each of a plurality of image pickup devices. Col. 4, ll. 35-50 of Fukushima describes a method for calculating a photometric evaluation value for the central portion of a target image. More particularly, Fukushima describes that an exposure amount (aperture, shutter speed, sensitivity gain) corresponding to this photometric evaluation value is determined for one image pickup portion R. Then, an exposure amount for the other image pickup system L is controlled so as to become equal to that of the pickup system R, based on the evaluation value EvR of the pickup system R.

Thus, in order for Fukushima’s apparatus to “perform proper exposure for each of a plurality of image pickup devices,” the exposure amount of the two pickup systems is configured to be equal. Such an apparatus/method is in clear contrast to amended

---

<sup>2</sup> Office Action, p. 10.

Application No. 09/837,342  
Reply to Office Action of November 5, 2007

independent Claim 8, which recites that the camera includes a photographing unit that can  
“*simultaneously obtain a plurality of images of the same object at different exposure  
values.*”

Further, “[i]n relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonable support the determination of the allegedly inherent characteristic necessarily flow from the teachings of the applied prior art.” *See Ex parte Levy*, 17 USPQ2d 1461, at 1464 (Bd. Pat. App. & Inter. 1990) and M.P.E.P. § 2112.

Simply because the device of Fukushima includes a plurality of pickup portions, does not mean that the use of different exposure values for each of the pickup portions is inherent. As discussed above, Fukushima teaches away from such a configuration by describing that the proper operation of his apparatus depends on the exposure amount of each of the pickup systems to be equal. Therefore, the idea that each of the pickups are capable of simultaneously obtaining a plurality of images of the same object at different exposure values does not necessarily flow from the description in Fukushima.

Further, as admitted at p. 8 of the Office Action, neither Yamagishi nor Bender describe the a plurality of CCDs which simultaneously pick-up an image of same or a plurality of objects. Thus, these references fail to cure the above noted deficiency in Fukushima.

Therefore, Yamagishi, Bender and Fukushima, neither alone, nor in combination, teach or suggest a digital camera comprising “a photographing unit which picks-up an image and obtains image data... wherein said photographing unit can *simultaneously obtain a plurality of images of the same object at different exposure values*,” as recited in amended independent Claim 8.

Accordingly, Applicant respectfully requests that the rejection of Claim 8 (and Claims 9-12 and 14, which depend therefrom) under 35 U.S.C. §103 be withdrawn. For substantially

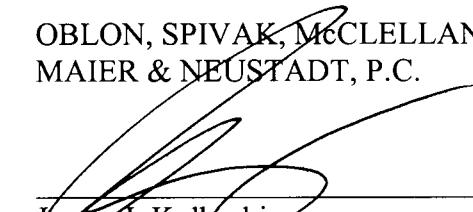
Application No. 09/837,342  
Reply to Office Action of November 5, 2007

similar reasons, it is also submitted that independent Claims 16, 18 and 20 patentably define over Yamagishi, Bender and Fukushima.

Consequently, in view of the present amendment and in light of the foregoing comments, it is respectfully submitted that the invention defined by Claims 8-12, 14, 16, 18, 20, 37 and 38 is patentably distinguishing over the applied references. The present application is therefore believed to be in condition for formal allowance and an early and favorable reconsideration of the application is therefore requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.

  
James J. Kulbaski  
Attorney of Record  
Registration No. 34,648

Andrew T. Harry  
Registration No. 56,959

Customer Number  
**22850**

Tel: (703) 413-3000  
Fax: (703) 413 -2220  
(OSMMN 06/04)